IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

OP.No. 25906 of 2000(H)

PETITIONER:

THE SECRETARY, BALLIAPATANAM TILE WORKERS UNION (CITU), PAPPINISSERI P.O., KANNUR DIST.

BY ADV. SRI.M.SASINDRAN
SRI.BIPIN VIJAYAN

RESPONDENTS:

1. MANAGING DIRECTOR, BALLIAPATHANAM TILE WORKS PRIVATE LTD., PAPPINISSERRI P.O., KANNUR DIST.

2. THE INDUSTRIAL TRIBUNAL, KOZHIKODE.

BY ADV. SRI.U.K.RAMAKRISHNAN
SRI.E.K.MADHAVAN
SRI.P.V.LOHITHAKSHAN
SMT.UMA GOPINATH

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 31/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF MEMORANDUM OF SETTLEMENT DT. 20-10-1993.

EXT.P2 CLAIM STATEMENT IN I.D.24/1997.

EXT.P3 AWARD PUBLISHED IN KERALA GAZETTE DT. 27-6-2000.

RESPONDENTS' EXHIBITS:

EXT.R1(a) ORDER DT. 30-6-1997.

EXT.R1(b) LONG TERM CONCILIATION SETTLEMENT DT. 27-12-1997.

EXT.R1(c) LONG TERM SETTLEMENT DT. 27-11-2000.

EXT.R1(d) LONG TERM SETTLEMENT DT. 27-7-2004.

[TRUE COPY]

P.S TO JUDGE.

S. Siri Jagan, J.

=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=

O.P. No. 25906 of 2000

=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=

Dated this, the 31st January, 2007.

J U D G M E N T

One of the Unions in I.D.No. 24/1997 before the Industrial Tribunal, Kozhikode challenges Ext. P3 award passed by the Tribunal in that I.D. There were three Unions in that I.D. The petitioner herein is the second Union. The issues referred for adjudication were as follows:

> "1. Whether those badali workers of Baliapatam Tile Works (P) Ltd., P.O. Pappinissery, who have completed 240 days of attendance after 1-4-1993, ie, date of implementation for wage increase, are eligible for getting increase in wages as contemplated in clause 2 of the general long term settlement No.G4-974/93 dated 20-10-1993.
>
> 2. Whether the action of the management to impose a deduction in the salary of the badali workers of the company's III Factory at Payyannur is justifiable."

2. The Unions took up a contention that all badali workers who completed 240 days of attendance, as and when such attendance is completed, would be entitled to the benefit of clause 2 of Ext. P1 settlement. It appears that the management had, in fact, disbursed some amounts to some of the badali workers who had not actually completed 240 days of attendance at the time of Ext. P1 settlement. The same also was recovered from the badali workers. The learned Tribunal interpreted clause 2 as applicable to those badali workers who have already completed 240 days of attendance as on the date of the agreement and held that therefore the badali workers who completed 240 days of attendance subsequent to the date of Ext. P1 settlement would not be entitled to the benefit of that clause. This finding of the Tribunal is under challenge in this original petition.

3. Learned counsel for the petitioner-Union would submit that the intention behind Ext. P1 settlement was only to give the benefit of pay revision to all badali workers who complete 240 days of

attendance as and when they complete the 240 days of attendance and therefore the Tribunal ought to have granted the benefit to the badali workers who completed 240 days of attendance subsequent to the date of Ext. P1 settlement also.

4. On the other hand, learned counsel for the 1st respondent-management would contend that the intention of the parties who signed Ext. P1 settlement is gatherable from the language of clause 2 itself. According to him, the language of clause 2 does not admit of two interpretations. The one and only interpretation possible is that the benefit of clause 2 would be applicable only to those badali workers who have already completed 240 days of attendance as on the date of Ext. P1 settlement. He would submit that since mistakenly some amounts were disbursed to some badali workers, the management is not precluded from recovering the same since the same has been mistakenly paid. He would also bank on the fact that out of the three Unions, the other two Unions have accepted the award and have not chosen to challenge the award. Learned counsel for the 1st respondent-management also draws my attention to the fact that some other employees had also claimed the same relief by filing C.P.No. 1/1997 before the Labour Court, Kannur in which also clause 2 of Ext. P1 has been interpreted in the same way as the Tribunal did by Ext. R1(a) order. Exts. R1 (b), (c) and (d) subsequent long term settlements have also been produced which, according to counsel for the management, would go to show that wage revision has been subsequently given to all the badali workers irrespective of their attendance, which would also go to show that at the time of Ext. P1 settlement, the intention of the parties were only to give wage increase to those badali workers who completed 240 days of attendance as on the date of Ext. P1 settlement.

5. I have considered the rival contentions in detail.

6. Clause 2 of Ext. P1 reads thus:

> "2. Salary increase
>
> The management agreed to give to all the permanent workmen and to those Badali workmen who have completed 240 days of attendance, an increase in the existing salary as follows, which increase is termed as "Additional Salary" and is in addition to the basic pay:
>
> i) With effect from 1.4.1993 - Rs.100/- p.m. (Rupees one hundred only)
>
> ii) With effect from 1.4.1994 - a further increase of Rs. 25/- p.m. (Rupees Twenty five only)
>
> iii) With effect from 1.4.1996 - a further increase of Rs. 25/- p.m. (Rupees Twenty five only)"

As noted by the Tribunal, the words used in clause 2 are those Badali workmen who have completed 240 days of attendance. The normal meaning of these words would be to the effect that clause 2 would be applicable only to those badali workmen who have already completed 240 days of attendance, which can only mean completion of attendance as on the date of Ext. P1 settlement. Further, in clause 2, the wage increase is to be with effect from various dates. If clause 2 were to be applicable to badali workmen as and when they complete 240 days of attendance, these dates would become meaningless. I also find considerable substance in the contention of the 1st respondent-management that in Ext. R1(a), a similar interpretation has been adopted by the Labour Court, Kannur and that decision has become final. The interpretation given based on Exts. R1(b) to (d) settlement also lends support to the stand of the 1st respondent -management.

7. In any event, it cannot be disputed that the interpretation adopted by the Tribunal is one possible interpretation of clause 2. That being so, in exercise of my jurisdiction under Article 226 of the

Constitution of India, I cannot substitute my interpretation of clause 2 in the place of the interpretation adopted by the Tribunal, unless I hold that, the said interpretation is perverse, for which as I have already indicated there is no scope.

For all the above reasons, I do not find any merit in the contentions in the original petition and accordingly, the same is dismissed.

Sd/- S. Siri Jagan, Judge.

Tds/